

employee. This bill would instead sketch clearly and starkly who would qualify as an independent contractor for tax purposes. By defining the restricted class—contractors—instead of the general class—employees—my bill avoids laying out a labyrinth of rules. Once the distinction is clarified, the problem should all but disappear.

I plan to press this legislation in Ways and Means and hope Chairman ARCHER will bring it up as soon as possible. And let me just say this too: I believe that with the groundswell of support this bill is already getting, including the backing of seven committee chairmen and 14 Ways and Means members, we will pass it in this Congress.

H.R. 1972

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Contractor Tax Simplification Act of 1995".

SEC. 2. FINDINGS.

The Congress finds that:

(1) Simplifying the tax rules with respect to independent contractors was the top vote-getter at the 1995 White House Conference on Small Business. Conference delegates recommended that Congress "should recognize the legitimacy of an independent contractor". The Conference found that the current common law is "too subjective" and called upon the Congress to establish "realistic and consistent guidelines".

(2) It is in the best interests of taxpayers and the Federal Government to have fair and objective rules for determining who is an employee and who is an independent contractor.

SEC. 3. STANDARDS FOR DETERMINING WHETHER INDIVIDUALS ARE NOT EMPLOYEES.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 (general provisions relating to employment taxes) is amended by adding after section 3510 the following new section:

"SEC. 3511. STANDARDS FOR DETERMINING WHETHER INDIVIDUALS ARE NOT EMPLOYEES.

"(a) GENERAL RULE.—For purposes of this subtitle, and notwithstanding any provision of this subtitle to the contrary, if the requirements of subsections (b), (c), and (d) are met with respect to any service performed by any individual, then with respect to such service—

"(1) the service provider shall not be treated as an employee,

"(2) the service recipient shall not be treated as an employer, and

"(3) the payor shall not be treated as an employer.

"(b) SERVICE PROVIDER REQUIREMENTS WITH REGARD TO SERVICE RECIPIENT.—For the purposes of subsection (a), the requirements of this subsection are met if the service provider, in connection with performing the service—

"(1) has a significant investment in assets and/or training,

"(2) incurs significant unreimbursed expenses,

"(3) agrees to perform the service for a particular amount of time or to complete a specific result and is liable for damages for early termination without cause,

"(4) is paid primarily on a commissioned basis, or

"(5) purchases products for resale.

"(c) ADDITIONAL SERVICE PROVIDER REQUIREMENTS WITH REGARD TO OTHERS.—For the purposes of subsection (a), the requirements of this subsection are met if—

"(1) the service provider—

"(A) has a principal place of business,

"(B) does not primarily provide the service in the service recipient's place of business, or

"(C) pays a fair market rent for use of the service recipient's place of business; or

"(2) the service provider—

"(A) is not required to perform service exclusively for the service recipient, and

"(B) in the year involved, or in the preceding or subsequent year—

"(i) has performed a significant amount of service for other persons,

"(ii) has offered to perform service for other persons through—

"(I) advertising,

"(II) individual written or oral solicitations,

"(III) listing with registries, agencies, brokers, and other persons in the business of providing referrals to other service recipients, or

"(IV) other similar activities, or

"(iii) provides service under a business name which is registered with (or for which a license has been obtained from) a State, a political subdivision of a State, or any agency or instrumentalality of 1 or more States or political subdivisions.

"(d) WRITTEN DOCUMENT REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed, or the payor, and such contract provides that the individual will not be treated as an employee with respect to such services for purposes of this subtitle.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) If for any taxable year any service recipient or payor fails to meet the applicable reporting requirements of sections 6041(a), 6041A(a), or 6051 with respect to a service provider, then, unless such failure is due to reasonable cause and not willful neglect, this section shall not apply in determining whether such service provider shall not be treated as an employee of such service recipient or payor for such year.

"(2) If the service provider is performing services through an entity owned in whole or in part by such service provider, then the references to 'service provider' in subsections (b) through (d) may include such entity, provided that the written contract referred to in paragraph (1) of subsection (d) may be with either the service provider or such entity and need not be with both.

"(f) DEFINITIONS.—For the purposes of this section—

"(1) SERVICE PROVIDER.—The term 'service provider' means any individual who performs service for another person.

"(2) SERVICE RECIPIENT.—Except as provided in paragraph (5), the term 'service recipient' means the person for whom the service provider performs such service.

"(3) PAYOR.—Except as provided in paragraph (5), the term 'payor' means the person who pays the service provider for the performance of such service in the event that the service recipients do not pay the service provider.

"(4) IN CONNECTION WITH PERFORMING THE SERVICE.—The term 'in connection with performing the service' means in connection or related to—

"(A) the actual service performed by the service provider for the service recipients or for other persons for whom the service provider has performed similar service, or

"(B) the operation of the service provider's trade or business.

"(5) EXCEPTIONS.—The terms 'service recipient' and 'payor' do not include any entity

which is owned in whole or in part by the service provider."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

"Sec. 3511. Standards for determining whether individuals are not employees."

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to services performed after December 31, 1995.

NATIONAL LITERACY DAY 1995

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, June 30, 1995

Mr. PAYNE of New Jersey. Mr. Speaker, I am pleased to ask my colleagues to join me in observance of National Literacy Day on July 2, 1995. As we move into a technologically advanced, 21st century economy, it is imperative that the American people are equipped with the tools they will need to navigate in such a milieu. Basic literacy is a fundamental prerequisite to survival in our rapidly-developing world. While literacy does not guarantee success and prosperity in a third wave culture, illiteracy does forebode a life of poverty and despair.

When 30 million Americans cannot read, and over 42 million are functionally illiterate, we are relegating these individuals to a life on the cusp of viability and hopelessness. Furthermore, through the economic underemployment that an illiterate populace engenders, we are continuing to underutilize the resources which we possess. As a result, by the year 2000, we will need to retrain 50 million workers to enable them to compete in the new economy. Additionally, the Nation will spend over 225 billion dollars per annum because of the insufficiencies of illiterate workers.

Over the past 10 years, we recognized our commitment to literacy through a nationally observed Literacy Day. Today, I ask that we recognize July 2, 1995 as a day in which we both praise the efforts of those who have worked to increase our national reading capacity, and promote awareness of the shortcomings continually inherent in our educational system.

For example, in my home State of New Jersey, project Focus on Literacy, spearheaded by executive director Caryl Mackin-Wagner has worked tirelessly to increase statewide literacy. However, on the other hand, in New Jersey alone, there are over 800,000 people who are illiterate, and countless others who suffer from functional illiteracy.

This kind of awareness of both our successes and failures is crucial if we, as a Nation, hope to triumph over illiteracy. Therefore, Mr. Speaker, I ask that we again observe National Literacy Day on July 2, and continue our arduous journey toward a literate America.